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HUMAN RIGHTS COMMITTEE

Forty-sixth session

SUMMARY RECORD OF THE 1188th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 26 October 1992, at 3 p.m.

Chairman: Mr. DIMITRIJEVIC
later: Mr. POCAR

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Luxembourg

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GE.92-18121 (E)

The meeting was called or order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Luxembourg (CCPR/C/57/Add.4; HRI/CORE/1/Add.10)

1. The CHAIRMAN invited members of the Committee who had not yet done so to raise questions concerning sections I and II of the list of issues to be taken up in connection with the consideration of the second periodic report of Luxembourg (document without symbol).

2. Mr. FODOR, noting that according to paragraph 11 of the second periodic report of Luxembourg (CCPR/C/57/Add.4), the regulations relating to the administration and internal regime of prison establishments strictly prohibited any punitive use of means of constraint such as handcuffs or straitjackets, asked what specific disciplinary measures could be imposed on detainees. He also asked what was the maximum period for which a person could be held incommunicado since it should be laid down by law in order to avoid any abuses.

3. Referring to what was said in the last sentence of paragraph 13 of the report, he asked in what circumstances the examining magistrate could prohibit any communication between the detainee and his counsel or the diplomatic and consular authorities, and also whether the examining magistrate's powers in that connection were discretionary or whether he could act only in accordance with the law. Referring to what was stated in paragraph 39 of the core document (HRI/CORE/1/Add.10) concerning offences which under the Penal Code or special laws carried life sentences at forced labour, he wondered whether the imposition of that type of punishment was not contrary to the provisions of article 8, paragraph 3 (c), of the Covenant. Lastly, he asked what action was taken should detainees refuse to perform forced labour and what measures could be taken by the prison authorities to ensure that decisions imposing forced labour were applied.

4. Mr. WENNERGREN asked whether a person sentenced to imprisonment incommunicado could appeal the decision and be provided with the assistance of a lawyer for that purpose.

5. It was his understanding that capital punishment had been abolished by the Act of 20 June 1979 and asked whether the Constitution of Luxembourg had been amended so as to do away with capital punishment entirely and not only for political offences, as provided in article 18 of the 1972 Constitution.

6. Lastly, he asked which authority was responsible for taking decisions to intern persons who had been found to be mentally disturbed, since it appeared that they were interned against their will; he also wondered what remedy they had against a decision of that nature.

7. Mr. THORN (Luxembourg), replying to the various questions raised by members of the Committee in connection with section II of the list of issues, said that Luxembourg's interpretative declaration concerning article 10 of the Covenant was still in force. He also explained that the Court of Assize had

been done away with and that, in accordance with the new Code of Civil Procedure, crimes and offences were now dealt with by the Court of Appeal which consisted of three judges. Referring to the application of article 8 of the Covenant, he emphasized that the problem of slavery had never arisen in Luxembourg and that therefore no legislative action had ever been taken in that connection.

8. As for the question of guarantees against any arbitrary action on the part of the police or members of the gendarmerie, he explained that persons responsible for such action could be charged with assault and battery, that they were duly brought before a criminal court and that they were entitled to defence like any other citizens.

9. Replying to a question raised by Mrs. Higgins, who had asked whether the family of a detainee could be consulted in connection with the appointment of medical experts, he explained that if the family made such a request it was naturally consulted; if no request was made the appointment of medical experts was left to the discretion of the public prosecutor in his capacity of supervisor of prison establishments.

10. Referring to the question concerning pre-trial detention, he said that any decision in that connection was subject to the provisions of the Code of Criminal Investigation and that the examining magistrate had to give his decision within 24 hours of the arrest of the person concerned. If, after 30 days, the court had not reached a decision to release him, the public prosecutor could request his release; the court could, however, reject that request on the basis of a unanimous decision and for specific reasons. Yet, even when the pre-trial detention decision was extended from one month to the next, the defence lawyer could submit a request for release on bail to the public prosecutor. In practice, therefore, pre-trial detention was never extended for an indeterminate period and did not continue for an unreasonable time.

11. Referring to incommunicado detention, he said that members of the Human Rights Committee would find replies to their question in a report submitted by Luxembourg to the Committee against Torture in April 1992. Incommunicado detention was most exceptional in Luxembourg, since the problem that arose in prison establishments was rather one of overcrowding and promiscuity. The decision to keep a person incommunicado was taken not by the director of the prison establishment but by the public prosecutor acting on the opinion of a doctor as when there was danger for the detainee himself or for his fellow detainees. The detainee's lawyer could request the abrogation of the decision after obtaining a doctor's opinion about mental and physical condition of the detainee. The public prosecutor then gave his decision in the matter - a procedure which no doubt constituted a shortcoming in Luxembourg's prison system - although he acted on the basis of the doctor's opinion. Maximum solitary confinement amounted to 23 hours per day.

12. Replying to a question put by Mr. Ando, who had referred to the committee of three experts, two of whom had to be doctors, mentioned in paragraph 15 of the second periodic report, he said that a lawyer could certainly be a member of the committee since the law simply required that two of its members should be doctors.

13. Turning to the provisions described in paragraph 16 of the second periodic report, he explained that, in accordance with the Code of Criminal Investigation, the judges in chambers must indicate, on the basis of a unanimous and substantiated decision, which measures should be taken or suspended, particularly in connection with the release of someone in custody. Those provisions might at first sight appear to be discriminatory since the person concerned was presumed innocent, although in practice the procedure had to be repeated every month according to the Code of Criminal Investigation, in other words, each time the lawyer so requested, and the judges in chambers had to meet to examine the situation; that procedure constituted a guarantee that the period of detention would not be unreasonable.

14. On the question of the protection of youth, he said that the Act of 12 November 1971 had recently been replaced by a new Act approved by the Chamber of Deputies; his Government would supply the Committee with the text. Minors in a prison environment were kept separate from adults and had contact with them in certain prison establishments only in the course of workshop activities or work that they elected to perform. Social reintegration measures were drawn up by the Minister for Social Welfare in consultation with experts and specialized psychologists. Generally speaking, those measures gave good results although it was still difficult to avoid recidivism. The problem of drug addiction, which was punishable by law, arose in Luxembourg prisons undoubtedly just as it did in the prisons of many countries throughout the world, but any drug addict who was a detainee could at his request receive treatment corresponding to his needs. Drug addicts could also be kept in solitary confinement for a specific and renewable period for as long as the reason for such confinement persisted, both to protect the detainee himself and to avoid any danger to other detainees.

15. Replying to a question put by Mr. Fodor, he said that the regulations of prison establishments provided for a number of disciplinary punishments, ranging from a simple reprimand to solitary confinement; however, the imposition of any punishment of that type could be appealed to the magistrate responsible for the supervision of prisons. Detainees could always communicate with their family, their lawyer, the public prosecutor and even the consular authorities, and such communication could be prohibited only by decision of the examining magistrate in very specific cases. The decision, if left to the discretion of the magistrate, was never made arbitrarily. Moreover, the Penal Code still provided for forced labour sentences, although such sentences were never imposed in practice.

16. The death penalty had indeed been abolished in the Penal Code, and at the time there had been a great deal of controversy in political circles about the desirability of abolishing it in the Constitution as well. In practice, the death sentence could no longer be pronounced even though it was maintained in the Constitution. A compromise solution had thus been arrived at, although the new Chamber of Deputies which was to be elected in 1993 would undoubtedly once again examine the question of doing away with the death penalty in the Constitution.

17. Lastly, he explained that detainees who had been declared mentally disturbed by a panel of doctors could be treated either in the prison establishment or in a psychiatric establishment. The decision was taken by

the public prosecutor, but the family naturally had the right to express its views. There was no appeal against a decision of that nature although it was never taken arbitrarily.

18. Mrs. HIGGINS said that the question of solitary confinement had admittedly been discussed in Luxembourg's report to the Committee against Torture, but the Human Rights Committee was now dealing with the application of the articles of the International Covenant on Civil and Political Rights in accordance with the procedure it had established. Although the core document prepared by Luxembourg was undoubtedly of general interest, each treaty body should nevertheless conduct its dialogue with the State party in the way it saw fit.

19. She had noted that the decision to place a detainee in solitary confinement was taken by the public prosecutor and not by the director of the prison establishment, but it was still not clear for what reasons that was done. The representative of Luxembourg had referred to the danger that might arise for the detainee himself or for his fellow detainees, but he had not given any reason for the imposition of the punishment itself. She also wondered why a drug addict should be placed in solitary confinement whereas, according to the representative of Luxembourg, mentally disturbed detainees could receive treatment either in prison or in a psychiatric establishment. Moreover, if solitary confinement could last as long as the reasons for it persisted, there was a danger that that type of detention would be prolonged indefinitely. Lastly, she asked the representative of Luxembourg to indicate whether persons in solitary confinement could be provided with reading matter, what were their contacts with wardens, how many detainees had been placed in solitary confinement during the previous year, for what reasons and for what length of time.

20. Mr. EL SHAFEI, wishing to dispel an unfortunate misunderstanding, said that in referring to the application of article 8 of the Covenant, he had obviously not been thinking of slavery but of forced labour, and in particular work performed in prisons for an outside enterprise, in connection with which an ILO committee of experts had requested information from the Government of Luxembourg. Could the Luxembourg delegation inform the Committee about the work that detainees were forced to do?

21. Mr. PRADO VALLEJO said he was concerned by the prolonged solitary confinement of certain detainees in Luxembourg, since it appeared to be unjustified and had been the subject of many comments by international organizations. Moreover, it seemed that pre-trial detention in the way it was applied in Luxembourg for a long period and without any final sentence having been pronounced was not in accordance with practices likely to guarantee the rights set forth in the Covenant. The purpose of pre-trial detention was to prevent the accused from running away and avoiding punishment; it could not be applied across the board. In his view, solitary confinement and pre-trial detention as practised in Luxembourg were akin to inhuman treatment and seemed contrary to article 7 of the Covenant. He would appreciate clarification in that connection.

22. Mr. THORN (Luxembourg), referring to the points raised by Mrs. Higgins, explained the situation as regards solitary confinement. It was not of a

punitive nature but a disciplinary measure taken within a prison establishment and one that could be imposed only by the public prosecutor; the detainee's lawyer could, moreover, request the public prosecutor to revoke it. As regards the work performed by prisoners in prisons, it was described in chapter 8 of the Prison Regulations. All prisoners had the right to work, and could elect to work or not. On the other hand, work was compulsory for persons serving a criminal or correctional sentence and they received the money that they had earned when they left prison. That, moreover, was the purpose of the work they were obliged to do. There was no such thing as forced labour in the Grand Duchy of Luxembourg. The work performed by prisoners was based on the same conditions as normal work outside, namely, a 40-hour week, social security and all the various prerogatives associated with work done outside the prison.

23. In reply to Mr. Prado Vallejo, he explained that solitary confinement was an exceptional measure imposed to protect the detainee from his fellows and vice versa. A few detainees had been kept in solitary confinement during the past two years, namely, murderers who had attacked a bank, killed several employees as well as a policeman, and seriously wounded several others. The persons concerned had also committed murder among themselves, in their own milieu, and were also being charged in that connection. Amnesty International was attaching a great deal of importance to the matter but the four persons in question were the only ones kept in solitary confinement in Luxembourg.

24. Pre-trial detention was ordered for very specific reasons, and the order could be revoked at any time by the public prosecutor at the request of the accused or by the judges in chambers (see para. 16, CCPR/C/57/Add.4). Every accused person could, each month, request his release, and if there was no longer any danger of flight or falsification of evidence, his request should be granted. Preventive or pre-trial detention in Luxembourg was ordered in very specific cases and lasted barely a month because the prisons were overcrowded.

25. The CHAIRMAN invited the Luxembourg delegation to reply to the written questions set out in sections III and IV of the list of issues to be taken up in connection with the consideration of the second periodic report of Luxembourg (document without symbol) which read as follows:

"III. Freedom of movement and expulsion of aliens and freedom of expression and assembly (arts. 12, 13, 19 and 21)

"(a) How many aliens have been refused permission to settle in Luxembourg or had their aliens identity card withdrawn and its renewal refused because they failed to fulfil legal obligations towards their family? (See para. 28 of the report).

"(b) Please provide details of administrative arrangements for the detention of aliens awaiting expulsion.

"(c) Please clarify how the compatibility with article 21 of the Covenant of the provision allowing communal authorities to issue regulations relating to the exercise of the right to freedom of assembly is ensured.

"IV. Protection of the family and rights of persons belonging to minorities (arts. 23, 24 and 27)

"(a) Please provide information on existing legislative or administrative arrangements for protecting children's interests in cases of separation from the family other than those described in paragraph 37 of the report.

"(b) With reference to the statement made during the consideration of the initial report of Luxembourg, please provide further details of the ways and means by which the Immigration Council integrates aliens into society."

26. Mr. THORN (Luxembourg) said that the reply to question (a) of section III was "None". As for question (b), he explained that expulsion and extradition were covered by the Schengen Agreement which concerned only the members of the European Economic Community that had acceded to it, as Luxembourg had done. Aliens could be expelled only for very specific reasons as when, first, if a crime had been committed on territory other than that of the Grand Duchy and, secondly, if they had caused or were likely to cause a breach of the peace in Luxembourg territory. However, the expulsion order - which was an administrative decision - could be appealed before the Council of State which would decide first of all whether the expulsion order was not illegal, secondly, whether the established procedure had been respected and, thirdly, whether the decision had been taken for valid reasons. Expulsion or extradition cases were handled as a matter of urgency and the formalities took very little time. There had never been any complaints, either on the part of the countries to which the persons concerned had been extradited nor in Luxembourg itself by persons against whom an extradition order had been issued.

27. Turning to question (c) of section III, he said that all aliens could meet together as much as they wanted to in Luxembourg, provided that they did so at home. Other meetings were subject to the law and communal regulations. Article 25 of the Constitution, which was applicable in that connection, stated that "Luxembourgers shall have the right to assemble peaceably and unarmed in compliance with the laws governing the exercise of this right, which shall not be made subject to prior authorization. This provision shall not apply to open-air political, religious or other meetings, which shall continue to be fully governed by the laws and regulations for the maintenance of public order". Foreigners were subject to the same rule as was clear from article 111 of the Constitution which stated that "Every foreigner on the territory of the Grand Duchy shall enjoy the protection afforded to persons and property, except as otherwise provided by the law". Open-air, political, religious or other gatherings were regulated by the communal authorities, burgomasters or municipal authorities. The regulations in question were subject to the approval of the Minister of the Interior who handed down a regulatory decision, and any citizen who considered himself injured by that decision could apply to the administrative courts to challenge its legality in respect of himself or the association to which he belonged.

28. Going on to section IV of the list he said, in connection with the rights of persons belonging to minorities (question (b)), that he had sought in vain

a definition of minorities in article 27 of the Covenant. There were over 80 foreign nationalities in Luxembourg, which had a population of 378,000; in the circumstances, therefore, it was difficult to speak of minorities. Aliens and nationals of the European Economic Community countries were part of the national community regardless of their race, nationality, colour or religion, since Luxembourgers knew full well that without them the country would not enjoy its present prosperity. Those persons were regarded as full citizens and enjoyed the same rights as Luxembourgers in respect of social security, sickness and pensions, with the exception of the right to vote.

29. As regards the protection of the interests of children separated from their families and placed with third persons (question (a)), he explained that it was the guardianship magistrate, in cooperation with the Central Social Assistance Service, who took adequate steps to protect the children in question. In conclusion, he said that no infringement of the provisions of articles 23, 24 and 27 of the Covenant had been recorded in Luxembourg.

30. The CHAIRMAN invited members of the Committee to raise questions, if they wished to do so, in connection with sections III and IV of the list of issues to be taken up.

31. Mr. SADI had taken note of the reply to question (a) of section III, namely, that no alien had been refused permission to settle in Luxembourg, had had his identity card withdrawn or its renewal refused because he had failed to fulfil his legal obligations towards his family. Nevertheless, the law stated that an alien's residence permit could be withdrawn or its renewal refused if he failed to fulfil his obligations towards his family (para. 28, CCPR/C/57/Add.4). He wondered whether that was a sound solution to the problem of the default of a parent in respect of his family in view of the provisions of article 23 of the Covenant, which stated that the family was entitled to protection by society and the State. By refusing an alien permission to settle in the Grand Duchy or to issue an identity card, the State was in point of fact separating the children and the other parent from the defaulting parent. In his view that problem concerned the application of article 23 of the Covenant and he requested clarification.

32. Moreover, with respect to question (b), it seemed that aliens against whom an expulsion order had been taken could appeal the decision in Luxembourg. He requested the Luxembourg delegation to explain the procedure by which an alien could request that an expulsion order affecting him should be overruled.

33. Mr. FODOR said he wished to raise two questions, the first of which concerned article 25 of the Covenant. Paragraph 39 of the report (CCPR/C/57/Add.4) stated that, according to Luxembourg law, "grounds for exclusion from the electoral roll" covered persons "who, on conviction in correctional cases, are deprived of their right to vote". He wished to know for how long such persons were deprived of the right to vote - for the duration of their sentence or for a period laid down by law?

34. The second question concerned article 27 of the Covenant, in connection with which it was stated in the initial report of the State party (CCPR/C/31/Add.2, para. 116) that "The State of Luxembourg does not include

any ethnic, religious or linguistic minority in the sense those expressions are employed in the Covenant"; that was tantamount to saying that there were no minorities in Luxembourg. In paragraph 43 of the second periodic report it was stated that "The rights codified in article 27 are protected by the Constitution of Luxembourg", which suggested that there were minorities in Luxembourg and that their rights were protected by the Constitution. However, after having heard the Luxembourg delegation's replies to questions concerning article 27 of the Covenant, he had the impression that they harked back to the first interpretation - that of the initial report. He would like to know why the State party considered that there were no minorities in Luxembourg in the sense that the term was used in article 27 whereas aliens enjoyed almost the same rights as Luxembourg nationals with the exception of the right to vote.

35. Mr. LALLAH also raised the question of minorities about which a misunderstanding appeared to have arisen. Minorities did not exist in a vacuum, out of context. Article 27 of the Covenant dealt with linguistic, religious or ethnic minorities and sought to protect the right of members of those groups to use their own language, to practise their religion and to enjoy their own culture. It did not seem that anyone was deprived of those rights in Luxembourg. On the contrary, the delegation had stated that aliens living in Luxembourg territory spoke their own language and professed their own religion, and that situation corresponded fully to what was provided for in article 27 of the Covenant.

36. Mr. EL SHAFEI recalled, in connection with article 12 of the Covenant, that paragraph 51 of the initial report of Luxembourg (CCPR/C/31/Add.2) stated that "under article 35 of the Penal Code, when a judge has ordered a convicted person to be released subject to special police supervision, the Government may prohibit the released person from appearing in certain places. This provision, which is very seldom applied nowadays, is to be deleted in a forthcoming revision of the Penal Code". However the second periodic report had nothing to say on the subject except that "The rights codified in articles 11 and 12 are protected by the Constitution of Luxembourg" (CCPR/C/57/Add.4, para. 27). He asked whether the provision in question had indeed been done away with at the time the Penal Code was revised.

37. Mr. WENNERGREN associated himself with the question put by Mr. Fodor concerning the right to vote. It was his understanding that that right was not enjoyed by offenders who had been convicted. Was that true regardless of the offence committed? Specifically, if a person was convicted for his political, religious or ideological convictions, was he also deprived of his right to vote? Had any cases of that kind already occurred? Furthermore, in the case of a sentence handed down by a correctional court, in other words for a relatively minor offence, he hoped to hear that deprivation of the right to vote was not the rule but, on the contrary, an exception. Had such deprivation already taken place in a case of that nature?

38. He did not have a clear picture of the situation in Luxembourg concerning the right of peaceful assembly. Article 21 of the Covenant stated that no restrictions could be placed on the exercise of that right other than those imposed in conformity with the law. Yet article 25 of the Constitution of Luxembourg stated that open-air political, religious or other meetings were

fully governed by the laws and regulations for the maintenance of public order. Yet such regulations were not laws. He would like to know exactly what the position was and whether the situation in Luxembourg was in conformity with the provisions of the Covenant.

39. Mr. ANDO raised two questions concerning the right to freedom of expression embodied in article 19 of the Covenant. First, was the licensing system for radios and television sets as well as other media still in force? What was the procedure for obtaining a licence and was there a movement in favour of the liberalization of the system if it was still in force? Secondly, what was the situation, in law and in practice, concerning the access of Luxembourg citizens to public archives?

40. Mr. THORN (Luxembourg) said he was not quite sure he had understood the question put by Mr. Sadi. It was legally possible to refuse to renew an alien's residence permit although no cases of that nature had so far been brought to the attention of the authorities. He assumed that, in a way, Mr. Sadi's question was a recommendation in favour of amending the legislation with a view to strictly regulating refusal to authorize residence permits. He agreed that, in that sphere, the law and practice could be regarded as contradictory. As for the question of remedies against an expulsion decision, he said that extradition procedure was subject to certain formalities and that all Luxembourg Government ministers had to give their assent. Furthermore, a person against whom an expulsion order had been issued could appeal to the Council of State, and his appeal was in practice dealt with within 24 hours of its receipt.

41. Replying to the questions raised by Mr. Fodor and Mr. Wennergren concerning the loss of civil rights by persons who had been convicted, he said that article 53 of the Constitution constituted the framework of the law which simply indicated how it should be applied. Under that article of the Constitution, persons who had been condemned to serve heavy sentences, persons sentenced to terms of imprisonment for larceny, fraud or breach of trust, as well as persons in a state of bankruptcy, criminal bankrupts and persons under interdict and those for whom a judicial adviser had been appointed were deprived of the right to vote and stand for election. The right to vote could be suspended by the judge at his discretion, but only temporarily. Moreover, adults under tutorship - essentially mentally disturbed persons - were also deprived of the right to vote. No other cases excluding persons from the right to vote and stand for election were provided for under Luxembourg legislation. He added that that right was an essential political right, even for persons who had been convicted, and that those who had been deprived of that right as a result of a conviction could recover it by being pardoned by the Grand Duke.

42. Taking up the question put by Mr. Fodor concerning ethnic minorities, he pointed out that he had long searched in vain for a definition of an ethnic minority. If it meant a community born in the territory of a nation and representing in some way a legal entity in that territory, as he had been inclined to believe hitherto, then there were no ethnic minorities in

Luxembourg. The country had immigrants of many nationalities, races and religions who did not constitute ethnic minorities within the meaning of Luxembourg law, but rather formed a group enjoying the same rights as Luxembourg citizens. He recalled that, as Luxembourg had only 378,000 inhabitants, it would be going a little too far to speak of ethnic minorities in such a small population. However, if it was felt that immigrants constituted into associations formed ethnic minorities then it could be said that such minorities did exist in Luxembourg. He added that ethnic minorities, if that term was to be used, enjoyed the same rights as other citizens.

43. With respect to Mr. Lallah's question concerning article 27 of the Covenant, and more specifically the right of minorities to profess their religion, he said that that right was obviously guaranteed. A large number of religions had places of worship in Luxembourg and moreover Luxembourgers were extremely tolerant in that respect.

44. Replying to a question concerning expulsions, he said that they did not occur, and indeed would have very little meaning in a country where one was never more than 20 kilometres from the frontier.

45. Referring to the questions put by Mr. Wennergren concerning the right to vote, he explained that the judge was obliged to suspend the right to vote of a person sentenced for a major crime under the Penal Code (namely, murder or rape). In the case of a simple offence, the judge could supplement the sentence with suspension of the right to vote, although he was not obliged to do so. In any event, the right to vote and to stand for election could be recovered by being pardoned.

46. As for the conditions under which citizens had access to public archives, he explained that in 1991 Luxembourg had adopted a law protecting data banks against computer viruses. Public archives had been entered into data banks, to which access was subject to Government authorization. Any citizen could freely consult hard copy archives.

47. Replying to the question put by Mr. Wennergren concerning the right of peaceful assembly, he said that its exercise was subject to police regulations in each of the country's communes. However, the applicability of those regulations was governed by law and reflected the restrictions provided for in article 21 of the Covenant. Subject, therefore, to the restrictions laid down by law, the right to associate and to meet freely was guaranteed in Luxembourg.

48. Mr. Ando had wondered whether the fact that a television network had to obtain a licence could be interpreted as a restriction of the right to freedom of expression. That problem had obviously arisen for the Luxembourg authorities. The licence was granted to operating companies but was not subject to any restrictions concerning the number or nature of broadcasts, on the understanding however that such broadcasts should be in conformity with a law on the protection of minors against erotic films and films of violence. However, it was virtually impossible to monitor content, and the right to the freedom of expression of television networks had never been restricted in any

way in practice. The situation as regards the national press was different, and a journalist could be prosecuted for defamation. Generally speaking, however, the regulations contained no provision likely to curb the media.

49. Mr. Pocar took the Chair.

50. The CHAIRMAN noted that the Committee had no further questions in connection with the list of issues to be taken up and invited members to present their final observations concerning the second periodic report of Luxembourg (CCPR/C/57/Add.4 and HRI/CORE/1/Add.10).

51. Mrs. HIGGINS thanked the Luxembourg delegation for the information it had provided, which had enabled the Committee to acquire a better understanding of the legal system in force in Luxembourg. She had taken note in particular of the new legislative provisions concerning the rights of children and of foreigners, the right of asylum and the organization of the judicial system. She had also appreciated the frankness of the Luxembourg delegation, which had recognized that the Covenant was not well known in its country and had undertaken to recommend to the authorities that they should bring the Committee's work and practice to the attention of the judiciary. She had also been most impressed by the care lavished on young persons and particularly those in detention, who were therefore very vulnerable. She also noted the existence of the conventional arrangements concluded between the State and religious corporations, since a State's subsidization of a number of religions was quite unusual. Those arrangements deserved consideration, particularly as certain difficulties could arise when additional religions took root in Luxembourg.

52. It was her understanding that suspension of the right to vote was part and parcel of the sentence. It was not a measure stemming from detention, as was the case in the United Kingdom, her own country. That raised certain problems under article 25 of the Covenant, which stated that every citizen had the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions, to vote and to be elected. She wondered whether deprivation of that right as part of a sentence did not constitute an unreasonable restriction.

53. She was also still concerned by the question of solitary confinement. The Luxembourg delegation had explained that that measure was of a disciplinary and not punitive nature. The difference was extremely subtle. A measure of that kind could admittedly be justified by necessity in the case of extremely dangerous individuals, not only to protect them against themselves but also to protect others. She would, in any event, like to know how a decision to impose that measure was taken, at what point it was considered necessary and for how long. Furthermore, what the Luxembourg delegation had said had not really explained the need to deprive detainees of books and newspapers as provided for by prison regulations. Moreover, one hour of exercise per day for detainees did not seem adequate. In her view, solitary confinement for a period of two years or more was hardly different from inhuman treatment within the meaning of the Covenant. However, she had noted that, according to the Luxembourg delegation, only four murderers had been kept in solitary confinement and that measure had not been applied to anyone else in the recent past.

54. She wished to summarize the view of the Committee concerning the question of ethnic minorities: when a State party refused to discuss that question because, in its view, it involved self-determination, the Committee's reply was that the rights of minorities and the right to self-determination should not be confused. If the State party stated that there were simply no ethnic minorities in its territory, wishing thereby to demonstrate that all citizens enjoyed the same treatment, the Committee's reply was that although under the Covenant all citizens should be treated on a footing of equality without any discrimination (subject to certain derogations concerning the political rights of foreigners), the question of minorities should be dealt with separately. In speaking of ethnic minorities, it was not enough to state that all citizens enjoyed the same treatment. In that connection she referred to article 27 of the Covenant, which stated that persons belonging to ethnic, religious or linguistic minorities could not be denied the right to enjoy their own culture, to profess and practise their own religion or to use their own language. It was therefore important to ensure that that right was fully guaranteed by the State party. She was, in any case, quite convinced that that was the case in Luxembourg.

55. In conclusion, she thanked the Luxembourg delegation for engaging in a dialogue with the Committee and, apart from the few points she had mentioned, said she was satisfied with the information that had been provided.

56. Mr. EL SHAFEI said he was gratified by the very frank dialogue which had taken place and which had served to clarify several points and had usefully supplemented the second periodic report (CCPR/C/57/Add.4). Moreover, the core document (HRI/CORE/1/Add.10) was an excellent report which would certainly also be very useful to other bodies responsible for monitoring the application of international human rights instruments.

57. The question of ethnic minorities had been clarified as a result of the exchange of views that had taken place and Mrs. Higgins had summarized the Committee's position on the matter extremely well. The Luxembourg delegation had, moreover, in the final analysis recognized the existence of ethnic minorities in its country. What remained to be done perhaps was to arrive at an agreed definition of the terms employed. In any event, it could be agreed that there were entities or communities which should enjoy the protection of the rights set out in article 27 of the Covenant.

58. He had been pleased to learn that only a very small number of persons had been kept in solitary confinement for a long period. Lastly, on the question of the deprivation of the right to vote, he said the Committee hoped that the relevant legislation would be revised.

59. Mr. PRADO VALLEJO thanked the Luxembourg delegation for its cooperation. Luxembourg was a country in which major human rights problems did not arise and which was clearly demonstrating its determination to promote and protect such rights. The precedence accorded to international law over domestic law was embodied in its legislation and was of importance from the standpoint of respect for the fundamental rights proclaimed in the human rights covenants.

60. He was however, concerned by the solitary confinement regime which was unduly long and which, owing to its nature and the restrictions it entailed,

could be regarded as inhuman treatment. He was also concerned by the prolongation of pre-trial detention. Pre-trial detention served a specific purpose, which was to ensure that the accused could be brought before a court. It should not become the rule, nor should it affect enjoyment of the right to liberty and other human rights or call in question the principle of the presumption of innocence. It was to be hoped that the Luxembourg delegation would draw the Government's attention to those points.

61. Mr. WENNERGREN said he was gratified by the constructive and instructive dialogue that had been established between the Luxembourg delegation and the Committee. He wished however, to express concern about three matters. The first was the death penalty. He was pleased to learn that the Constitutional Court intended to do away with it and hoped that there would be no obstacle to the consequential amendment of the Constitution.

62. His second concern was about the solitary confinement regime. Its use constituted inhuman treatment to which very few countries had recourse. Even in the case of prisoners who presented a danger to themselves or to their fellow detainees, the objective should be social rehabilitation which could not be achieved by solitary confinement. Detainees who did not even have access to written matter, to the radio or to television and were completely cut off from the outside world could be regarded as being subjected to very inhuman treatment indeed. Solitary confinement, when necessary, should be for short periods only and not for several years. He was also concerned to note that the decisions of the public prosecutor relating to the solitary confinement of detainees or the internment of mentally disturbed persons were not subject to appeal. Even if such decisions were taken in good faith it was impossible to rely on the good faith of one person alone.

63. Lastly, he was concerned by the deprivation of the right to vote in connection with a conviction. No one in a genuinely democratic State should ever be deprived of that fundamental and inalienable right. Luxembourg had already modified or reduced the use of that sanction. It was to be hoped that it would continue along those lines and do away with any restriction of the right to vote in connection with conviction for a crime.

64. Generally speaking, Luxembourg's human rights record was excellent and that was why the Committee felt that a few points that were still of concern should be highlighted.

65. Mr. ANDO thanked the Luxembourg delegation for its cooperation. He emphasized that the Committee's intention was not to level accusations or to criticize the human rights policy of any Government, but rather to identify possible problems connected with the protection and promotion of those rights and to examine them with the State party concerned with a view to their solution. The core document submitted by Luxembourg (HRI/CORE/1/Add.10) was excellent and the delegation's oral replies had made good certain gaps in the second periodic report (CCPR/C/57/Add.4). Generally speaking, no serious human rights problems arose in Luxembourg and that country's record was certainly exemplary in that respect.

66. He was, however, concerned by the length of pre-trial detention, which should be limited by law. However, it varied from case to case and judge to

judge. It was supposed to be proportional to the anticipated penalty, which was contrary to the principle of the presumption of innocence. Those two things should be completely separate. He also shared the concern expressed by other members of the Committee concerning solitary confinement.

67. Lastly, he wished to recommend that Luxembourg should explore the possibility of withdrawing the reservations it had entered in connection with article 19, paragraph 2, of the Covenant. The restrictions imposed by Luxembourg on radio and television programmes as well as films was apparently explained by the desire to protect public order, public health or morals as provided for in article 19, paragraph 3 of the Covenant, but the maintenance of reservations to that article did not appear to be justified.

68. The promotion and protection of human rights were ensured in an excellent manner in Luxembourg but the Committee wished to help improve the situation even further by drawing attention to a few minor shortcomings.

69. Mr. LALLAH thanked the Luxembourg delegation for its reports and replies to questions, which had provided members of the Committee with a better understanding of the human rights situation in Luxembourg.

70. He was rather surprised to learn that the Covenant was not familiar to the population, magistrates and those responsible for the affairs of State, and hoped that the Government would correct that shortcoming.

71. A certain amount of misunderstanding seemed to persist concerning the meaning of the term "minority". Be that as it may, there were minorities in Luxembourg that enjoyed the protection provided for by article 27 of the Covenant.

72. He was concerned by the question of solitary confinement. He recalled that, in becoming parties to the Covenant, States accepted very considerable limitations on the type of punishment that could be imposed: punishment must not be cruel, inhuman or degrading. Solitary confinement could be justified for acts committed in prison, provided that it was of short duration, but punishment entailing two years of solitary confinement did not seem compatible with modern standards for the treatment of human beings. Moreover, the fact that the law apparently failed to impose any limit on the duration of solitary confinement was most peculiar and certainly contrary to the Covenant. The attention of deputies and all other segments of society should be drawn to that point as well as to the Covenant, so that Luxembcurg could envisage doing away with that type of punishment.

73. In his view, a convicted person should not be deprived of the right to vote, not only because he continued to be part of society and should therefore be represented, but also because he could make a contribution to the welfare of the nation. The right to vote should not simply be a privilege that could be withdrawn because of a failing.

74. The CHAIRMAN congratulated the Luxembourg delegation on its competence and frankness. The precedence accorded to international law (and therefore, in particular, the Covenant) over domestic law was an essential aspect of Luxembourg's legal system. The examining magistrate had the power to disallow

domestic law if it was contrary to a treaty. It would therefore be desirable that the judicial authorities became more familiar with the Covenant, the way it was applied and the practice followed by the Committee. They should be informed of the Committee's general observations, the decisions it took under the Optional Protocol and its conclusions concerning human rights situations in Luxembourg. He was sure that the Luxembourg authorities would take the concerns expressed by members of the Committee into account.

75. Mr. THORN (Luxembourg) thanked members of the Committee for their questions, their criticism and their suggestions.

The meeting rose at 5.45 p.m.